IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 18.04.2005

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.K.KRISHNAN

H.C.P. No.1400 of 2004

Mohamed Sathali Premnasir ... Petitioner

vs.

1. The State of Tamilnadu
Rep. by the Secretary to the Government,
Public (SC) Dept.,
Fort St. George,
Chennai 600 009.

2. The Union of India,
Rep. by the Secretary to Government,
Ministry of Finance,
Department Of Revenue,
(COFEPOSA Unit)
Central Economic Intelligence Bureau,
Janpath Bhavan, "B"-Wing,
6th Floor, Janpath,
New Delhi-110 001.

3. The Superintendent of
Central Prison,
Central Prison, Madurai. ... Respondents

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Petition under Article 226 of the Constitution of India for the issuance of a writ of habeas corpus to call for the records relating to the detention order in G.O.No.SR.1/1142-4/2004, Public (SC) department dated 20.09.2004 passed by the first respondent herein and quash the same and direct the respondents to produce the body of the person of the detenu, Mohamed Sathali Premnasir, son of (Late) Mohamed Sathali, detained in the Central Prison, Madurai as COFEPOSA detenu and set him at liberty.

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For Petitioner : Mr.K.A.Jabbar

For R-1 & R-3 : Mr.A.Kandasamy
Additional Public Prosecutor.

For R-2 : Mrs.Vanathi Srinivasan,
Addl. Central Govt. Standing
Counsel

. . . . .

O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

The detenu by name Mohamed Sathali Premnasir, who was detained by the impugned detention order, dated 20.9.2004, passed under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974), challenges the said order in this Habeas Corpus Petition.

2. Heard learned Counsel for petitioner, learned Additional Public Prosecutor for R-1 and R-3 and learned Additional Central Government Standing Counsel for R-2.

3. Though several contentions have been raised questioning the impugned order of detention, learned counsel appearing for the Petitioner at the foremost projected that the detention order is liable to be quashed on the ground of non-application of mind on the part of the Detaining Authority, since there is no valid order extending the remand of the detenu beyond 07.09.2004.

4. To substantiate the above contention, learned counsel for the petitioner has taken us through copy of the remand extention order, both English and Tamil versions, which finds place at page Nos.102 and 103 of the booklet supplied to the detenu. By drawing our attention to the said order, it is contended that after recording the fact of production of the accused, namely, the detenu, through video conference, the learned Additional Chief Metropolitan Magistrate, E.O.1, Egmore, Chennai-8, simply adjourned the petition to 21.09.2004 and that no order has been passed extending the remand of the detenu till 21.09.2004. According to the counsel, this is clear from the Tamil version of the order, which finds place at page No.103 of the booklet. We have gone through both English and Tamil version of the order which finds place at page Nos.102 and 103 of the booklet. On verification of the same, we see that a petition was filed for extension of remand beyond 07.09.2004 and though

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production of the accused was satisfied through video conference, we do not find any specific order by the Additional Chief Metropolitan Magistrate, extending the remand beyond 07.09.2004, both in the English and Tamil versions of the order. However, learned Additional Public Prosecutor, by drawing our attention to the Heading made to that order, namely, "REMAND EXTENSION ORDER DATED 07.09.2004", would submit that the said caption makes it clear that the learned Magistrate extended the remand till 21.09.2004 and according to him, there is no flaw in the said order. It is also brought to our notice the statement made in the counter affidavit filed on behalf of the first respondent. In paragraph No.6, it is stated as follows:-

> " ... I submit that in the order, dated 7/9/2004 of the Additional Chief Metropolitan Magistrate, Economic Offence-I, it was stated inter alia, as 'adj....to 21.9.2004". But, the detenu has failed to note the superscription of the order which read as Remand Extension Order, dated 7/9/2004 and therefore it implies that the remand of the accused has been extended upto 21.9.2004 and this document along with its Tamil translation are available at pages 102 and 103 of the booklet. "

5. We have already referred to the order of the learned Magistrate dated 07.09.2004 (both English and Tamil versions). On going through the same, we are satisfied that there is no specific order extending the remand beyond 07.09.2004. In such circumstances, the explanation offered in the counter affidavit, particularly in paragraph No.6, cannot be accepted. Though learned Additional Public Prosecutor heavily relied on the "caption" of the order, we are of the view that caption is not the order of the learned Magistrate and we are concerned only with the actual order passed by the Presiding Officer concerned. As said earlier, looking at any angle, we cannot presume that the learned Magistrate has extended the period of remand beyond 07.09.2004 as claimed by the learned Additional Public Prosecutor and as explained in the counter affidavit filed before us. We are satisfied that there is no specific order extending the remand beyond 07.09.2004.

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6. In this regard, learned counsel appearing for the petitioner has also brought to our notice an earlier decision rendered by a Division Bench of this Court reported in 2002-2-L.W. (Cri) 543 (Karthik v. The Commissioner of Police, etc. & another). It is seen that for a wrong description of the date (according to the prosecution, it is a typographical error), the Division Bench, relying on an earlier Division Bench decision in S.Chelladurai Nadar v. State of Tamil Nadu (1992(1) Crimes 271), quashed the

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detention order therein on the ground of non-application of mind. The Division Bench decision relied on by the learned counsel for the petitioner is applicable to the case on hand.

7. In the light of our discussion, the Habeas Corpus Petition is allowed, quashing the impugned order of detention dated 20.09.2004. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to the Government, Public (S.C.) Dept.,
Fort St. George, Chennai 600 009.

2. Secretary to the Government, Ministry of Finance,
Department of Revenue, (COFEPOSA Unit)
Central Economic Intelligence Bureau,
Janpath Bhavan, "B"-Wing, 6th Floor, Janpath,
New Delhi-110 001.

3. The Superintendent of Central Prison,
Central Prison, Madurai.

4. The Joint Secretary to Govt Public
(Law and order) Fort Saint George, Chennai 9.

5. The Public Prosecutor,
High Court, Madras 104.

6. The Sub Asst.Registrar
COFEPOSA Section, Administrative Dept.,
High Court, Madras.

+ 1 cc to M/S.K.A.Jabbar, Advocate SR 18842

+ 1 cc to Mr.Vanathi Srinivasan, SR 18455

AK(CO)
SR/26.4.2005

HCP. No.1400 of 2004.

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